

MT LEGISLATIVE HISTORY

Chapter 521 1983

Bill H 591 S _____

Original bill & hist. C

H. Committee on Education and Cultural Resources

Hearing Date(s) Feb 02 C

Feb 16 ✓ C

 C

 C

Date Out Feb 16 ✓ C

S. Committee on Education and Cultural Resources

Hearing Date(s) Mar 14 ✓ C

Mar 23 ✓ C

 C

 C

Mar 23 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

HOUSE EDUCATION COMMITTEE MINUTES
February 7, 1983, page 2

HOUSE BILL 591

REPRESENTATIVE GERRY NISBET, District 35, Great Falls, opened by saying this bill makes specialists eligible for tenure. At the present time, there is no definition in the codes of what or who is a specialist. A common definition is that it includes school psychologists, speech pathologists, physical therapists, occupational therapists, and some others. The only specialist that must be certified under the policies of the Board of Education are school psychologists. They must obtain a class 6 specialist certificate. While specialists are not classroom teachers, they are an integral part of the education process and are really teachers in the same sense that they work directly with students in specialized areas. I feel that providing these certified specialists with the same rights as other certified members of the profession, would set right an inequity that currently exists. The second thing that House Bill 591 does is to delete the portion of the statute in 10-4-203, subsection 2. In November of 1981, the Montana Supreme Court ruled that 20-4-203, subsection 2, is impliedly repealed by the human rights act. House Bill 591 will clean up this part of the statute.

PROPONENTS

JUDITH BURKHARTSMEYER, Montana Association of School Psychologists, submitted a written copy of her testimony. (see exhibit 3)

SHIRLEY DeVOE, Montana Speech and Hearing Association, submitted a written copy of her testimony. (see exhibit 4)

DAVID SEXTON, Montana Education Association, said we regard this as a very important bill. We think the two issues addressed in this bill need to be taken care of. There is a conflict with the federal discrimination statute, and the state constitution. The discrimination that exists in the present statute is unenforceable, and we think the language needs to be cleared up so that teachers and school districts will know what their status is. Within the districts, we think these specialists are treated virtually the same as other teachers in just about every respect. They are on the same salary schedules and the same bargaining units as other teachers. We run into odd situations in cases of layoffs, where tenured and nontenured status makes a difference. Ordinarily a tenured teacher is considered to have seniority over a non-tenured. We think this is an inequity. A teacher fresh out of college could be retained over someone who has many years of experience, simply because they happen to be on a different job assignment. We believe all teachers should be treated the same.

HOUSE EDUCATION COMMITTEE MINUTES
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JIM McGARVEY, Montana Federation of Teachers, said I am in support of House Bill 591. Teachers currently get tenure regardless of the nature of funding of the program. Often times the argument against giving specialists tenure is that the funding is different. Currently, teachers are given tenure upon signing their fourth contract. With regard to seniority in the districts we represent, specialists are on the seniority rosters just like any other teacher in the school district, providing that they have the background to move into another area in time of layoffs. I think by affording specialists the same rights as teachers, you will be doing nothing more than putting into law, or supporting, many of the practices that are happening in school districts today. For years, many school districts gave contracts to specialists. It wasn't until the last few years that there was any distinction made.

OPPONENTS

WAYNE BUCHANAN, Montana School Board Association, said we feel this is a step in the wrong direction. This compounds the problem that we have with tenure generally. The point has been made today that specialists in schools are very similar to teachers because they are required to have teaching certificates from the Office of Public Instruction. The only category that has certification is the school psychologists. Anyone that is functioning as a teacher is tenured. As long as special education teachers and counselors meet these provisions, they are protected by the tenure statutes. We are talking about people who are not teaching. There is a vast difference between those teaching and those performing special services. When you hire these people, you are hiring them for special skills. Is it right for them to bump a teacher who was hired on the basis of teaching ability rather than for special services. The difficulties that would be caused are not reasonable. One of the difficulties we have with this bill is that we are not sure as to who would be involved. Sometimes specialized work is contracted out. How do you treat these special individuals and special services. This legislation would be a terrible blow to school districts.

Rep. Nisbet closed by saying providing the same opportunity for tenure to specialists who are already subject to the same regulations as classroom teachers will not be opening tenure to anyone, it will merely correct an inequity that exists in the tenure statutes.

Questions from committee. Rep. Lory said in case you have a reduction of force, a tenured teacher can only bump someone who is qualified in the same area, so you aren't really going to have that problem.

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Mr. Buchanan said you might have the problem of teachers bumping into an area. There is no reason why a psychologist who has an elementary teaching status couldn't bump an elementary teacher. If they were only certified in those areas, it would be fine, but many of these people hold teaching certificates.

Rep. Yardley asked Mr. Sexton if this bill automatically gives a hearing specialist tenure without a decision from the school board, is this retroactive. The answer was I would assume it would apply to those people who had been there for four years or longer. I would have no objection to adding a reaction time to the bill.

Rep. Yardley asked Mr. Buchanan if the school boards would have an opportunity to make a decision on these people. The reply was no, it would be instantaneous from the point that they signed their fourth contract.

Rep. Miller asked Ms. Burkhartsmeier if it is correct that all specialists have a masters degree. The response was yes, they must have a masters degree or a fifth year of specialized course work.

Rep. Miller commented it could be read in that they have to have a degree to cover these people.

Rep. Hammond said if you have a degree and there is a second grade teacher who has been there two, three, four years, and you both have tenure under this law, you might have the right to riff him. You have chosen to be a specialist, he has chosen to be an elementary teacher. I don't think you have that right. Ms. Burkhartsmeier replied it is a matter of specialization. If I want to become a better reading teacher, I risk tenure by going back and being specialized when I am still working with elementary children. I would, in fact, be more qualified than a teacher with lesser experience and lesser education.

Rep. Hammond called on Jim McGarvey to answer the same question. Mr. McGarvey said your question is one that is in the school districts right now between an elementary teacher and a high school teacher, between a math teacher and a physical education teacher, with regard to qualifications and tenure. Right now we have the tenure statute and it has been used to defend teachers when they have been fired unfairly. We are now in an era where we are looking at riffs, and we plug in the tenure law. If a school doesn't have a collective bargaining agreement that provides for an orderly seniority procedure, then that is where

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HOUSE EDUCATION COMMITTEE MINUTES
February 7, 1983, page 5

we are with your question. This specialist would fit into the seniority spectrum. You cannot bump around in areas that you are not qualified for.

Rep. Hammond asked the same question of Mr. Sexton. The reply was the seniority provisions are determined at the local level. The provision says that the individual must have taught that subject within the last five years, or must have taught a certain number of years. There are qualifications on this.

Chairman Daily closed the hearing on House Bill 566 at 1:30 p.m.

HOUSE BILL 552

REPRESENTATIVE FRITZ DAILY, District 87, Butte, carried House Bill 552 for Representative Kenneth Nordtvedt, District 77, Bozeman, chief sponsor. Rep. Daily said this bill requires that when there is an additional voted levy in a school district, that the additional voted levy will not only state the amount and number of mills that are asked for, but will also state the percentage of increase or decrease from the last voted levy. It will make sure that the percentage of increase or decrease will be stated along with the amount and number of mills.

PROPOSERS

DENNIS BURR, Montana Taxpayers Association, said the bill provides a little more explanation to the people who are voting in the mill levies.

OPPOSERS

WAYNE BUCHANAN, Montana School Board Association, said the major difficulty with this bill is that the general fund doesn't necessarily have anything to do with the amount you are asking at the levy. This false picture is almost certain to cause a defeat of the local mill levies, particularly when there has been an increase in the general fund budget for some reason. There are a lot of reasons why the general fund budget can increase. Some school districts are trying to put their building programs into the general fund budgets. They will add a classroom or expand their building, and instead of having a separate bond issue for these things, they are just going to handle them in their general fund budgets. For a year or two, it will show a significant percentage increase in their general fund budget percentages. This may or may not have an effect on the voted levy. Some reasons why it could increase for a year or so are major purchases of equipment, heating, an influx of students, increased ANB, which would result in increased foundation

WITNESS STATEMENT

Name Judi Bumbarton Committee On Education
 Address Helena Date 2/7/83
 Representing MT. ASSOC. SCHOOL BSY Support ✓
 Bill No. 591 (Listed) Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Teachers to ed. students approp.

1. Intent of tenure to allow ~~appropriate~~ ^{need} ~~education~~ w/out undue pressure of relig./admin./community sources. This ^{need} certainly applies to the needs of "specialist" teachers (Sp./Bsy/OT/PT).
2. Specialists org. not addressed in law due to few no.s. and usually teachers w/ some additional training. (Covered by tenure)
3. W/ increase in scope of students served in public ed. (handicapped) ^{the} ~~required~~ ^{and job} for inst. specialists w/ adv. education in variety of areas but who ^{concerns} ~~concerns~~ the ed. of students: who: ^{we} ~~we~~ want some protection as reg. teachers.
4. We are reg. by OPT. Class vs reg. M.S.T. curriculum reg.
 • We meet same cont. ed. reg.
 • We sign identical contracts; put up w/ same condit. of employment (w/ inst. needs due to constraint of state/fed laws we operate under).
5. To deny cont. tenure is discriminatory.
6. RT concerns can be distinct mandated. We are fed and our tenure is not a signif. risk to reg. ed. teachers on the districts that employ us.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



Exhibit 4

MONTANA SPEECH AND HEARING ASSOCIATION

February 7, 1983

House Education Committee:

As a representative of the Montana Speech and Hearing Association, I urge your support of House Bill 591 with our suggested amendment.

As you know, there are currently over 200 speech-language-hearing professionals working in the public schools in Montana. We are licensed by the Board of Speech Pathologists and Audiologists. Our credentialing law is such that we must have a Masters degree or equivalency to be fully licensed in the State of Montana.

Both the Office of Public Instruction and the Montana Board of Speech Pathologists and Audiologists have mandated/required superior qualifications for speech-language-hearing specialists to the point where a speech-language pathologist or audiologist must meet requirements superior to other teacher certification requirements. Therefore, to deprive a 4th year speech pathologist of tenure should easily be proven as discrimination. Only time stands between this antiquated law and the court test to prove its discrimination.

Also note that the speech-language-hearing professionals in the public schools sign identical contracts as certified teachers, therefore agreeing to the same conditions of employment.

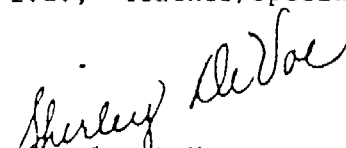
The speech-language pathologist and/or audiologist cannot obtain certification as the Office of Public Instruction has endorsed and relegated credentialing speech pathologists and audiologists to the Board of Speech Pathologists and Audiologists, i.e., if you have a license in speech pathology and/or audiology you are thereby approved to work in the public schools.

It is our feeling that the original teacher tenure law with the words "requiring teacher certification and excluding specialist" is discriminatory.

We would propose the following amendment to line 15 of HB 591 which would give licensed professionals working in the schools the same tenure rights given to certified teachers.

Line 15 "position requiring teacher certification and/or state licensure in a specific profession".

To make the law more consistent with the proposed amendment, the word "specialist" could be added wherever the law refers to teacher, i.e., "teacher/specialist".


Shirley DeVoe
Speech/Language Pathologist

VISITOR'S REGISTER

HOUSE Education

COMMITTEE

BILL 591

DATE 2/7

SPONSOR Thelvet

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE EDUCATION COMMITTEE MINUTES

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Rep. Donaldson moved to take House Bill 93 from the table, the motion carried unanimously.

Rep. Donaldson said this gives the student from the small school, from 14 to 18 students, a better education. Rep. Donaldson then passed out a handout concerning the costs of House Bill 93 as amended. (see exhibit 11)

Chairman Daily said we are not deciding on the money, we are deciding on the concept, it will go to appropriations from here.

Rep. Donaldson moved the amendments to House Bill 93, DO PASS. (see exhibit 12)

Rep. Donaldson said we are talking about educational quality for all of the students in these schools.

The motion passed unanimously.

Rep. Donaldson moved House Bill 93, DO PASS as amended.

Rep. Hannah commented in the testimony, the problem was that they couldn't get the cooperation from the people in their community.

The motion carried with Representatives Sands and Hannah voting no.

HOUSE BILL 396

Rep. Keenan moved to TABLE House Bill 396, the motion carried unanimously.

HOUSE BILL 591

Rep. Nisbet moved House Bill 591, DO PASS.

Rep. Nisbet moved to amend House Bill 591 to reinsert "specialist" where it had been stricken from the bill.

Rep. Kitselman moved to amend line 5 to strike "after an act".

The amendments passed with Rep. Schye voting no.

Rep. Nisbet moved House Bill 591, DO PASS as amended, the motion carried unanimously.

HOUSE BILL 395

Rep. Kitselman moved to TABLE House Bill 395, the motion carried with Representatives Peck, Donaldson, Hannah, Sands, and Hammond voting no.

STANDING COMMITTEE REPORT

February 16, 83

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SPEAKER:

MR.

EDUCATION AND CULTURAL RESOURCES

We, your committee on

HOUSE

591

having had under consideration Bill No.

first

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reading copy (.....)

color

"AN ACT TO ALLOW A TEACHER WHO IS A SPECIALIST THE SAME OPPORTUNITY FOR TENURE THAT OTHER TEACHERS ARE OFFERED; TO REMOVE THE AGE DISCRIMINATION PROVISION FROM THE LAW GOVERNING TENURE; AMENDING SECTIONS 29-4-203 AND 29-4-204, MCA."

HOUSE

591

Respectfully report as follows: That..... Bill No.

be amended as follows:

1. Title, lines 4 through 6.

Following: "ACT"

Strike: remainder of line 4 through "OFFERED;" on line 6

2. Page 1, line 16.

Following: "specialist"

Insert: "or specialist"

AND AS AMENDED

DQ PASS.

V

MINUTES OF THE MEETING
EDUCATION AND CULTURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 14, 1983

The meeting of the Senate Education and Cultural Resources Committee was called to order by Chairman Bob Brown on March 14, 1983 at 12:30 p.m. in Room 325, State Capitol.

ROLL CALL: All committee members were present.

Senator Brown introduced four students from Laurel who spoke to the committee about projects and outstanding programs in the Laurel school system. Those students were Cynthia-Ann Krilly, Laurel High School, Shelley Hanson, Laurel High School, April Rankin, Laurel Jr. High School, Trevor Bellandi, Graff Elementary School and Blake Stout, South Elementary.

HOUSE BILL 591: Representative Nisbet, District 35, sponsor of the bill, said the bill does one basic thing; it removes the age discrimination provision from the laws governing tenure.

PROPOSERS

Dave Sexton, Montana Education Association, stated support for the bill as currently state law is in conflict with the Montana Human Rights Act and federal law. It brings the tenure provision up to date with laws as set forth by the courts. He noted the specialist provision was taken out in the House and he urged the committee to amend the bill to put that section back in. He said specialists with a class 6 certification should have equal protection of due process under the tenure law as other classes of teachers.

Shirley DeVoe, Legislative Chairperson, Montana Speech-Language-Hearing Association, presented her testimony in support of the bill (exhibit #1).

There being no further proponents and no opponents, Representative Nisbet closed saying he supports Mr. Sexton's proposal to amend the bill back regarding specialist tenure.

HOUSE BILL 99: Representative Hammond, District 24, sponsor of the bill, said the bill provides for school years of less than 180 school days if a district conducts an equivalent number of hours. An election is required to authorize the

TO: The Senate Committee on Education and Cultural Resources
FROM: Lee Heiman, Committee Counsel
DATE: March 14, 1983
RE: Summaries of House Bills 99, 591, and 879

House Bill 99 (J. Hammond). Provides for school years of less than 180 school days if a district conducts an equivalent number of hours. An election is required to authorize the trustees of a district to apply to the Board of Public Education for the variance in the number of school days. The statement of intent provides that a pilot program of not more than 5 districts be involved.

House Bill 591 (Nisbet). Deletes provisions stopping teacher tenure at age 65 and for year-to-year contracts to age 70.

House Bill 879 (Peck). Prohibits sex discrimination in schools by addressing counseling and guidance services, access to course offerings, textbooks, and course materials. Provides rulemaking in the Superintendent of Public Instruction and provides as a penalty reduction in state money to a district. Also provides for civil actions by an individual.

3/14/83

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March 14, 1983

Sanator Bob Brown, Chairman
Senate Education and Cultural Resources Committee
Montana Senate

Dear Senator Brown:

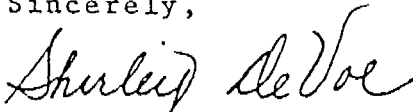
I would like to urge reconsideration by the Senate Education Committee to reintroduce and support certified or licensed education related specialists for tenure.

The speech pathologists and audiologists in the state have a licensure status and are not certified by OPI. However, both the Office of Public Instruction and the Montana Board of Speech Pathologists and Audiologists have mandated/required superior qualifications for speech-language-hearing specialists to the point where we must meet requirements superior to other teacher certification requirements. We also sign identical contracts as certified teachers when working in the public schools, therefore agreeing to the same conditions of employment.

I would like to see HB 591 amended to include certified or licensed education related specialists the same opportunity for tenure that other teachers are offered.

We would appreciate your time and consideration of this change.

Sincerely,



Shirley DeVoe
Legislative Chairperson
Montana Speech-Language-Hearing Association

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member of the School Board. She said the student participation on the School Board has just recently been added and on a trial run basis seems to be working out quite well.

Brian Helterline works with the computer program at Plains. He said Plains High School computer program was one of four selected nationwide by the Best program at the University of Washington to be filmed and documented as a model system. Brian has been very active in programming administrative programs for the school.

ACTION ON HOUSE BILL 428: Senator Blaylock moved the amendments as per the attached committee report (exhibit #2). The motion carried unanimously.

Senator Blaylock moved House Bill 428 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL 591: Senator Haffey moved the amendment as per the attached committee report (exhibit #3). The motion carried on a roll call vote with Senators Elliott, Gage, and Brown voting no.

Senator Berg moved House Bill 591 BE CONCURRED IN AS AMENDED. The motion carried on a roll call vote with Senators Smith, Elliott, McCallum, and Severson voting no.

ACTION ON HOUSE BILL 444: Senator Smith moved to amend House Bill 444 by adding an immediate effective date. The motion carried unanimously.

The committee delayed further action until later in the meeting for further information re a statement of intent.

ACTION ON HOUSE BILL 93: Senator Berg moved to amend the bill as per amendments 1(a) and 2 on attached committee report (exhibit #4). The motion carried unanimously.

Senator Berg moved to amend House Bill 93 as per the proposed Dover amendments (exhibit #5). The motion failed with only Senator Berg voting yes.

STANDING COMMITTEE REPORT

March 23, 1983

MR. PRESIDENT:

We, your committee on EDUCATION AND CULTURAL RESOURCES

having had under consideration HOUSE Bill No. 591

Nisbet (Berg)

Respectfully report as follows: That HOUSE Bill No. 591

third reading copy, be amended as follows:

1. Title, line 6.

Following: "OFFERED,"

Insert: "TO ALLOW A TEACHER WHO IS A SPECIALIST IN A POSITION
REQUIRING PROFESSIONAL LICENSURE THE SAME OPPORTUNITY FOR
TENURE THAT OTHER TEACHERS ARE OFFERED;"

2. Page 1, line 15.

Following: "certification"

Insert: "or professional licensure,"

3. Page 1, line 16.

Strike: "OR SPECIALIST"

And, as so amended, BE CONCURRED IN

CC-8468